

The Malmedy Trial: Denial of the Obvious

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The Malmedy trial took place from May 16 to July 16, 1946 at Dachau before a military tribunal of American officers operating under rules established by the Nuremberg International Military Tribunal.^[1] American historian Steven P. Remy has written a book titled *The Malmedy Massacre* which disputes that the 73 German defendants in this trial were improperly convicted.

Remy states in his book's conclusion that American interrogators did not use physical or psychological pressure to obtain information at any of their postwar trials. Remy writes:^[2]

"There is no evidence that in the North African, European, or Pacific theaters American interrogators relied on systematic forms of physical and psychological pressure to obtain information from combatants or civilians. Nor is there convincing evidence that they did so in war crimes investigations after the war."

This article will document some of the physical and psychological pressure used in the Malmedy and other American-run postwar trials.

Improper Postwar Interrogations



Scene from the Malmedy Show Trial

Contrary to Remy's statement, physical and psychological pressure was frequently used by interrogators in American-run postwar trials. Benjamin Ferencz, a Jewish American war crimes investigator who received a Harvard law degree in 1943, was assigned to investigate the concentration camps at Buchenwald, Mauthausen and Dachau.^[3] Ferencz admits that he used threats to obtain confessions. Ferencz relates a story concerning his interrogation of an SS colonel in which he took out his pistol in order to intimidate him:^[4]

"What do you do when he thinks he's still in charge? I've got to show him that I'm in charge. All I've got to do is squeeze the trigger and mark it as auf der Flucht erschossen (shot while trying to escape)... I said 'you are in a filthy uniform sir, take it off!' I stripped him naked and threw his clothes out the window. He stood there naked for half an hour, covering his balls with his hands, not looking nearly like the SS officer

he was reported to be. Then I said 'now listen, you and I are gonna have an understanding right now. I am a Jew—I would love to kill you and mark you down as auf der Flucht erschossen, but I'm gonna do what you would never do. You are gonna sit down and write out exactly what happened—when you entered the camp, who was there, how many died, why they died, everything else about it. Or, you don't have to do that—you are under no obligation—you can write a note of five lines to your wife, and I will try to deliver it...' (Ferencz gets the desired statement and continues:) I then went to someone outside and said 'Major, I got this affidavit, but I'm not gonna use it—it is a coerced confession. I want you to go in, be nice to him, and have him re-write it.' The second one seemed to be okay—I told him to keep the second one and destroy the first one. That was it."

The fact that Ferencz threatened and humiliated his witness and reported as much to his superior officer indicates that he operated in a culture where such illegal methods were acceptable.^[5] Any Harvard law graduate knows that such evidence is not admissible in a legitimate court of law.

The defense counsel at the Mauthausen trial in Dachau insisted that signed confessions of the accused, used by the prosecution to great effect, had been extracted from the defendants through physical abuse, coercion, and deceit.^[6] Ferencz admits that these defense counsel's claims were correct:^[7]

"You know how I got witness statements? I'd go into a village where, say, an American pilot had parachuted and been beaten to death and line everyone up against the wall. Then I'd say, 'Anyone who lies will be shot on the spot.' It never occurred to me that statements taken under duress would be invalid."

Robert Kempner was the American chief prosecutor in the Ministries Trial in which 21 German government officials were defendants. Kempner was a German Jew who had lost his job as Chief Legal Advisor of the Prussian police department because of National Socialist race laws. He was forced to emigrate first to Italy and then to the United States. Kempner was bitter about the experience and was eager to prosecute and convict German officials in government service.^[8]

Kempner bribed German Under Secretary Friedrich Wilhelm Gaus to testify for the prosecution in the Ministries Trial. The transcript of Kempner's interrogation of Gaus reveals that Kempner persuaded Gaus to exchange the role of defendant for that of collaborator with the prosecution. Gaus was released from isolation, and a few days later a German newspaper reported a long handwritten declaration from Gaus in which he confessed the collective guilt of the German government service. Kempner had given Gaus's confession to the newspaper.^[9] Kempner had also threatened to turn Gaus over to the Soviets unless Gaus was willing to cooperate with the prosecution.^[10]

Attorney Charles LaFollete said that Kempner's "foolish, unlawyer-like method of interrogation was common knowledge in Nuremberg all the time I was there and protested by those of us who anticipated the arising of a day, just such as we now have, when the Germans would attempt to make martyrs out of the common criminals on trial in Nuremberg."^[11]

Kempner also attempted to bribe German State Secretary Ernst von Weizsäcker during the Ministries Trial. However, von Weizsäcker courageously refused to cooperate. Richard von Weizsäcker, who helped defend his father at the trial, wrote: "During the proceedings Kempner once said to me that though our defense was very good, it suffered from one error: We should have turned him, Kempner, into my

father's defense attorney." Richard von Weizsäcker felt Kempner's words were nothing more than pure cynicism.[\[12\]](#)

Torture of Defendants

Allied prosecutors often used torture to help convict the defendants at Nuremberg and other postwar trials. A leading example of the use of torture to obtain evidence is the confession of Rudolf Höss, the former commandant at Auschwitz. Höss's testimony at the Nuremberg trial was the most important evidence presented of a German extermination program. Höss said that more than 2.5 million people were exterminated in the Auschwitz gas chambers, and that another 500,000 inmates had died there of other causes.[\[13\]](#) No defender of the Holocaust story today accepts these inflated figures, and other key portions of Höss's testimony at Nuremberg are widely acknowledged to be untrue.

In 1983 the anti-Nazi book *Legions of Death* by Rupert Butler stated that Jewish Sgt. Bernard Clarke and other British officers tortured Rudolf Höss into making his confession. The torture of Höss was exceptionally brutal. Neither Bernard Clarke nor Rupert Butler finds anything wrong or immoral in Höss's torture. Neither of them seems to understand the importance of their revelations. Bernard Clarke and Rupert Butler prove that Höss's testimony at Nuremberg was obtained by torture, and is therefore not credible evidence in establishing a program of German genocide against European Jewry.[\[14\]](#)

Bernard Clarke was not the only Jew who tortured Germans to obtain confessions. Tuviah Friedman, for example, was a Polish Jew who survived the German concentration camps. Friedman by his own admission beat up to 20 German prisoners a day to obtain confessions and weed out SS officers. Friedman stated that "It gave me satisfaction. I wanted to see if they would cry or beg for mercy."[\[15\]](#)

Joseph Kirschbaum was also accused of physical abuse at the Malmedy trial when German prisoner Otto Eichler accused Kirschbaum of beating him. A review of the medical records indicated that Eichler had received an injury, but it could not be proven that Kirschbaum had caused the injury.[\[16\]](#)

False and Perjured Witness Testimony

False witnesses were used at most of the Allied war-crime trials. Stephen F. Pinter served as a U.S. Army prosecuting attorney at the American trials of Germans at Dachau. In a 1960 affidavit Pinter said that "notoriously perjured witnesses" were used to charge Germans with false and unfounded crimes. Pinter stated, "Unfortunately, as a result of these miscarriages of justice, many innocent persons were convicted and some were executed."[\[17\]](#)

Joseph Halow, a young U.S. court reporter at the Dachau trials in 1947, later described some of the false witnesses at the Dachau trials:[\[18\]](#)

"...the major portion of the witnesses for the prosecution in the concentration-camp cases were what came to be known as 'professional witnesses,' and everyone working at Dachau regarded them as such. 'Professional,' since they were paid for each day they testified. In addition, they were provided free housing and food, at a time when these were often difficult to come by in Germany. Some of them stayed in Dachau for months, testifying in every one of the concentration-camp cases. In other words, these witnesses made their living testifying for the prosecution. Usually, they were former inmates from the camps, and their strong hatred of the Germans should, at the very least, have called their testimony into question..."

As is easily demonstrated by studying the Franz Kofler trial, these witnesses had often never laid eyes on the men against whom they were testifying! That they lied in court is clear from a close reading of the proceedings of the trials, for their testimony is frequently full of contradictions and inconsistencies.[\[19\]](#)

An embarrassing example of perjured witness testimony occurred at the Dachau trials. U.S. investigator Joseph Kirschbaum brought a former concentration- camp inmate named Einstein into the court to testify that the defendant, Menzel, had murdered Einstein's brother. Menzel, however, foiled this testimony—he had only to point to Einstein's brother sitting in the court room listening to the story of his own murder. Kirschbaum thereupon turned to Einstein and exclaimed, "How can we bring this pig to the gallows, if you are so stupid as to bring your brother into the court?"[\[20\]](#)

The use of false witnesses has been acknowledged by Johann Neuhäusler, who was an ecclesiastical resistance fighter interned in two German concentration camps from 1941 to 1945. Neuhäusler wrote that in some of the American-run trials "many of the witnesses, perhaps 90%, were paid professional witnesses with criminal records ranging from robbery to homosexuality."[\[21\]](#)

Willis N. Everett, Jr.

American attorney Willis N. Everett, Jr. was the lead defense counsel at the Malmedy trial. Everett was convinced that the Malmedy trial had been an ethical abomination. Approximately 100 of Everett's friends and some additional American military officers advised Everett to forget about the Malmedy case and live in the present. Everett's sense of ethics, however, set him on a mission to obtain justice for the Malmedy defendants.[\[22\]](#)

Everett and another defense-team member prepared a 228-page critique of the investigation and trial, stating that the Malmedy convictions had been secured primarily on the basis of "illegal and fraudulently procured confessions." The petition also argued that the trial was a travesty of justice to German soldiers since the Allies were also guilty of the same violations of international law. Everett sent this document to Lt. Col. Clio Straight's office for inclusion in the internal review process that was mandatory before verdicts and sentences became final.[\[23\]](#)

Everett began a multipronged campaign of judicial appeal, publicity and congressional pressure to get a retrial of the Malmedy case. Everett filed an unsuccessful petition with the U.S. Supreme Court to rehear the Malmedy case. Everett then prepared an appeal to the International Court of Justice in The Hague (ICJ). Everett knew there was little chance the ICJ would accept his case since only states could be parties to cases before the ICJ. The ICJ predictably refused to hear Everett's appeal of the Malmedy case.[\[24\]](#)

Everett made a huge personal and financial sacrifice to free the Malmedy defendants. The physical and emotional stress from the appeal process caused Everett to suffer from declining health and at least one heart attack. Everett estimated his out-of-pocket expenses to be as much as \$50,000, to which must be added the income lost through his neglect of his law practice. The West German consul in Atlanta later presented Everett with a check for \$5,000 as a gesture of appreciation for his inexhaustible efforts on behalf of the Malmedy defendants.[\[25\]](#)

Why did Everett make such a huge personal and financial sacrifice? Remy writes:[\[26\]](#)

“Everett also believed the army had treated him shabbily. He had been given an assignment for which he did not have the requisite experience or enough time, in his view, to prepare the case. Though he and the other defense lawyers had nonetheless mounted a vigorous defense, they lost the case, and badly. Facing the prospect of returning to his struggling Atlanta law firm and professional obscurity, he viewed a challenge to the outcome of the Malmedy trial as an opportunity for personal and professional redemption. Not least, there was the possibility of considerable financial gain, as he believed he had a story worth a great deal of money to the press.”

Remy provides no documentation for his contention that Everett challenged the outcome of the Malmedy trial “as an opportunity for personal and professional redemption” and “the possibility of considerable financial gain.” Everett had more to gain financially and professionally by forgetting the Malmedy trial and working full time in his law firm. Remy by his unsubstantiated statements is attempting to discredit Everett’s motives for challenging the Malmedy verdict.

Conclusion

Steven Remy writes:[\[27\]](#)

“The creation and perpetuation of self-serving myths about the past remains one of the most powerful cultural and political forces in the modern world. Gone unchallenged, such myths harden hearts and impede dialog and reconciliation between individuals, communities, and entire nations. They block the flow of honest and open-ended argument about the past and its significance to the present. Understanding the relationship between conflict and memory—individual and collective—will always be difficult and inconclusive. The point is to keep having the arguments.”

Remy is correct that we should keep having the arguments. These arguments should include the following from American attorney Warren Magee, who served as defense counsel in the Ministries Trial:[\[28\]](#)

“‘An eye for an eye and a tooth for a tooth’ is the driving force behind the prosecutions at Nuremberg. While it grieves me to say this, the prosecution staff, its lawyers, research analysts, interpreters, clerks, etc. is largely Jewish. Many are Germans who fled their country and only recently took out American citizenship. Jewish influence was even apparent at the first trial, labeled the IMT. Atrocities against Jews are always stressed above all else... With persecuted Jews in the background directing the proceedings, the trials cannot be maintained in an objectivity aloof from vindictiveness, personal grievances, and racial desires for revenge... Basic principles have been disregarded by ‘new’ Americans, many of whom have imbedded in their very beings European racial hatreds and prejudices.”

The arguments should also include the following from Benjamin Ferencz:[\[29\]](#)

“I was there for the liberation, as a sergeant in the Third Army, General Patton’s Army, and my task was to collect camp records and witness testimony, which became the basis for prosecutions...But the Dachau trials were utterly contemptible. There was nothing resembling the rule of law. More like court-martials. For example, they might bring in 20 or 30 people, line them up, each one with a number on a card tied around his neck. The court would consist of three officers. None of them had any legal education as far as I could make out; it was coincidental if they did. One officer was assigned as defense counsel, another as prosecutor, the senior one presiding. The prosecutor would get up and say something like this: We accuse all of you of being accomplices to crimes against humanity and war crimes and mistreatment of

prisoners of war and other brutalities in the camp, between 1942 and 1943, what do you have to say for yourself? Each defendant would be given about a minute to state his case, which was usually, not guilty. One trial for instance, which lasted two minutes, convicted 10 people and sentenced them all to death. It was not my idea of a judicial process. I mean, I was a young, idealistic Harvard law graduate.”

Ferencz states that nobody including himself protested against such procedures in these Dachau trials.[\[30\]](#)

The Malmedy trial was probably closer to a fair judicial process than Ferencz’s aforementioned description. However, the Malmedy trial was not a fair and impartial hearing. The lack of documentary evidence, the use of mock trials and interrogation methods designed to produce false confessions, military judges with little or no legal training, and unreliable eyewitness testimony assured the conviction of all 73 German defendants in the Malmedy trial.[\[31\]](#)

Notes

- [\[1\]](#) Parker, Danny S., *Hitler’s Warrior: The Life and Wars of SS Colonel Jochen Peiper*, Boston, Mass.: Da Capo Press, 2014, p. 148.
- [\[2\]](#) Remy, Steven P., *The Malmedy Massacre: The War Crimes Trial Controversy*, Cambridge, Mass.: Harvard University Press, 2017, p. 279.
- [\[3\]](#) Stover, Eric, Peskin, Victor, and Koenig, Alexa, *Hiding in Plain Sight: The Pursuit of War Criminals from Nuremberg to the War on Terror*, Oakland, Cal.: University of California Press, 2016, p. 32.
- [\[4\]](#) Jardim, Tomaz, *The Mauthausen Trial*, Cambridge, Mass.: Harvard University Press, 2012, pp. 82-83.
- [\[5\]](#) *Ibid.*, p. 83.
- [\[6\]](#) Jardim, Tomaz, *The Mauthausen Trial*, Cambridge, Mass.: Harvard University Press, 2012, p. 6.
- [\[7\]](#) Brzezinski, Matthew, “Giving Hitler Hell”, *The Washington Post Magazine*, July 24, 2005, p. 26.
- [\[8\]](#) Weizsäcker, Richard von, *From Weimar to the Wall: My Life in German Politics*, New York: Broadway Books, 1997, pp. 92, 97.
- [\[9\]](#) *Ibid.*, pp. 97-98.
- [\[10\]](#) Maguire, Peter, *Law and War: International Law & American History*, New York: Columbia University Press, 2010, p. 117.

- [11] Frei, Norbert, *Adenauer's Germany and the Past: The Politics of Amnesty and Integration*, New York: Columbia University Press, 2002, p. 108.
- [12] Weizsäcker, Richard von, *From Weimar to the Wall: My Life in German Politics*, New York: Broadway Books, 1997, pp. 98-99.
- [13] Taylor, Telford, *The Anatomy of the Nuremberg Trials: A Personal Memoir*, New York: Alfred A. Knopf, 1992, p. 363.
- [14] Faurisson, Robert, "How the British Obtained the Confessions of Rudolf Höss," *The Journal of Historical Review*, Vol. 7, No. 4, Winter 1986-87, pp. 392-399.
- [15] Stover, Eric, Peskin, Victor, and Koenig, Alexa, *Hiding in Plain Sight: The Pursuit of War Criminals from Nuremberg to the War on Terror*, Oakland, Cal.: University of California Press, 2016, pp. 70-71.
- [16] Remy, Steven P., *The Malmedy Massacre: The War Crimes Trial Controversy*, Cambridge, Mass.: Harvard University Press, 2017, p. 141.
- [17] Sworn and notarized statement by Stephen F. Pinter, Feb. 9, 1960. Facsimile in Erich Kern, ed., *Verheimlichte Dokumente*, Munich: 1988, p. 429.
- [18] Halow, Joseph, *Innocent at Dachau*, Newport Beach, Cal.: Institute for Historical Review, 1992, p. 61.
- [19] *Ibid.*, p. 312.
- [20] *Ibid.*, pp. 312-313; see also Utley, Freda, *The High Cost of Vengeance*, Chicago: Henry Regnery Company, 1949, p. 195.
- [21] Frei, Norbert, *Adenauer's Germany and the Past: The Politics of Amnesty and Integration*, New York: Columbia University Press, 2002, pp. 110-111.
- [22] Weingartner, James J., *A Peculiar Crusade: Willis M. Everett and the Malmedy Massacre*, New York: New York University Press, 2000, pp. 119, 138.
- [23] *Ibid.*, pp. 120-122.
- [24] *Ibid.*, pp. 150, 175, 181-183.
- [25] *Ibid.*, pp. 199, 220.
- [26] Remy, Steven P., *The Malmedy Massacre: The War Crimes Trial Controversy*, Cambridge, Mass.: Harvard University Press, 2017, pp. 130-131.
- [27] *Ibid.*, p. 280.
- [28] *Ibid.*, p. 134.

[29] Stuart, Heikelina Verriijn and Simons, Marlise, *The Prosecutor and the Judge*, Amsterdam: Amsterdam University Press, 2009, p. 17.

[30] *Ibid.*

[31] Remy, Steven P., *The Malmedy Massacre: The War Crimes Trial Controversy*, Cambridge, Mass.: Harvard University Press, 2017, pp. 58, 125.

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